

In line 1 of claim 21, please replace the first word "A" with the words --In a--.

In line 1 of claim 22, please replace the first word "A" with the words --In a--.

In line 1 of claim 23, please replace the first word "A" with the words --In a--.

In line 1 of claim 24, please replace the first word "A" with the words --In a--.

#### **REMARKS**

Reconsideration of the present application is respectfully requested. Claims 2 and 14 have been canceled without prejudice or disclaimer; and claims 1, 5, 13 and 15-24 have been amended. Claims 1, 3-13 and 15-34 are presently pending, with claims 1, 13 and 25 being independent.

In the Office Action dated September 22, 1999, claims 1-24 are rejected under 35 U.S.C. § 112, ¶ 2, because claims 1 and 13 are believed to recite the same invention and claims 3 and 15 recite "the series of cutters" for which there is no antecedent basis. Claims 13 and 15-24 have been amended herein to clearly recite a crop harvesting machine having a mobile frame. Applicant respectfully submits that these amendments sufficiently distinguish the invention recited in claims 13 and 15-24 from the invention recited in claims 1 and 3-12. Furthermore, the amendments to claims 1 and 13 have eliminated the antecedent problem noted in the Action. Applicant consequently requests that the § 112 rejection be withdrawn.

All of the originally filed claims are rejected in the Action. Particularly, claims 1-2 and 13-14 are rejected under 35 U.S.C. § 102(b) as being anticipated by the Scarnato, et al. '779.

Claims 1-6 and 13-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Schmitt, et al. '064 patent in view of the Scarnato, et al. '779 patent. Claims 1-8, 10-20, 22-30 and 32-34 are rejected under 35 U.S.C. § 103(a) over the Schmitt, et al. '064 patent in view of the Schelbourne, et al. '989 and Scarnato, et al. '779 patents. Finally, claims 9, 21 and 31 are rejected under 35 U.S.C. § 103(a) over the Schmitt, et al. '064 patent in view of the Schelbourne, et al. '989 and Scarnato, et al. '779 patents, as applied to claims 7, 19 and 25, and further in view of the van der Lely '445 patent. However, Applicant respectfully submits that none of the references of record, when considered singly or in combination, show or suggest the use of the invention recited in the pending claims.

According to amended independent claim 1, the present invention concerns a crop harvesting header including a crop cutting assembly that comprises a series of rotary cutters. The cutters cooperatively define a laterally extending cutting zone that is spaced forwardly and downwardly from the nip defined between a pair of laterally extending crop conditioning rolls. Moreover, the header includes a crop conveying element that moves upwardly and rearwardly between the cutting zone and the nip to convey crop cut by the cutting assembly toward the nip when the conveying element is driven. As noted in the specification, the inventive arrangement dramatically improves crop flow from the rotary cutters to the conditioning rolls (see page 12, line 29 through page 13, line 32).

Independent claim 13 recites a crop harvesting machine having the same limitations as the header recited in claim 1. Independent claim 25 is somewhat similar to claim 13 and particularly recites a laterally extending crop conveying roller that is located between the cutter bed and the nip and is rotatable in a direction to move crop from the cutter bed toward the nip.

The Scarnato, et al. '779 patent discloses a harvesting machine having a series of rotary mowing devices 35 spaced forwardly from a pair of conditioning rolls 8 and 11. An adjustable ramp 26 extends between the mowing devices 35 and the nip defined the rolls 8 and 11. The ramp 26 is swingable about pivot 29. Swinging movement of the ramp 26 is limited by slots 31 defined in sidewalls 28 projecting from the ends of the ramp 26. However, the ramp 26 is fixed during harvesting operations and does not provide a live surface which moves toward the nip defined between the rolls 8 and 11.

In fact, the device disclosed in the '779 patent is very similar to the prior art construction shown in FIG. 8 of the present application. The '779 patent simply fails to show or suggest the use of a driveable crop conveying element that has at least a portion thereof that moves upwardly and rearwardly from the cutting zone to the nip when the element is driven, as recited in independent claims 1 and 13. Nor does the '779 patent show or suggest the use of a crop conveying roller that is located between the cutter bed and the nip and is rotatable in a direction to move crop from the cutter bed toward the nip, as recited in independent claim 25.

The Schmitt, et al. '064 patent discloses a rotary mower conditioner 10 having a so-called "wide cut" cutter bed 32, with a pair of cutters 32a, 32b and 32i, 32j being outboard of each side of the discharge opening 102. Nothing in the '064 patent shows or suggests the use of a conveying element, as recited in claims 1 and 13, or a conveying roller, as recited in claim 25.

Although Applicant does not believe that the combination of the Scarnato, et al. '779 and Schmitt, et al. '064 patents is appropriate, the hypothetical combination nonetheless falls short of the claimed invention. That is, the references simply fail to teach or suggest the use of all the limitations of claims 1, 13 and 25. It is particularly noted that neither the '779 patent nor the '064 patent shows or suggests the use of a conveying element having a portion thereof that moves

upwardly and rearwardly from the cutting zone to the nip defined between the conditioning rollers as recited in claims 1 and 13, or a rotatable conveying roller located between the cutter bed and the nip, as recited in claim 25. Accordingly, a *prima facie* case of obviousness has not been established, and the obviousness rejection based on the '779 and '064 patents must consequently be withdrawn. See *M.P.E.P.* §§ 2142, 2143 and 2143.03.

The Schelbourne, et al. '989 patent discloses a stripping apparatus for grain or seed crops, wherein the apparatus includes a stripping drum 2 and a rearwardly spaced auger 12. A roller is provided for transferring stalks from the teeth of the drum to the auger 12.

Although the '989 patent is cited in combination with the '779 and '064 patents for its teaching of providing "a small conveying roller (14) to transfer crops from one assembly to another", Applicant respectfully submits that there is no motivation in the prior art to combine the references in the manner proposed in the Action. In other words, if the mind is properly cast back to the time of invention, there is nothing to motivate one to combine the references in a manner to arrive at the claimed invention. See, *In re Dembiczak* 175 F.3d 994, 999-1000 (Fed. Cir. 1999). In this respect, it may be inferred that the proposed combination of the references amounts to improper hindsight. *Id*; see also, *In re Rouffet*, 47 USPQ2d 1453, 1458 (Fed. Cir. 1998). The use of hindsight is always forbidden. *Rouffet* at 1458; *M.P.E.P.* § 2142.

Nothing in the Office Action points to specific information in these references that suggest their combination. Moreover, the '989 patent provides absolutely no suggestion that the roller 14 could be used in a harvesting machine to improve crop flow from a set of rotary cutters to the upwardly and rearwardly spaced nip defined between a pair of crop conditioning rolls. As noted above, both the Scarnato, et al '779 patent and Schmitt, et al. '064 patent fail to provide any suggestion that the crop flow from rotary cutters to the conditioning rolls may be improved by the

use of a live conveying element or conveying roller (as recited in claims 1, 13 and 25). Nor is there anything in the Action indicating where the motivation to combine the references may be found in the knowledge of one ordinarily skilled in the art or in the nature of the problem solved. Applicant further submits that such motivation outside the references does not exist. Therefore, the obviousness rejection based on the Shelbourne, et al. '989 patent in combination with either or both of the Scarnato, et al. '779 or Schmitt, et al. '064 patents is improper and should be withdrawn.

The van der Lely '445 patent is cited simply for its showing of an auger having flighting with opposite inclination on either side of the midpoint of the auger. This reference obviously fails to show or suggest the use of the structure recited in independent claims 1, 13 and 25.

In view of the foregoing, Applicant submits that the independent claims 1, 13 and 25 recite structure not shown or suggested in the prior art references of record. Claims 3-12 depend directly or indirectly from claim 1, claims 15-24 depend directly or indirectly from claim 13, and claims 26-34 depend directly or indirectly from claim 25. These dependent claims recite additional features of the invention not shown or suggested by the prior art.

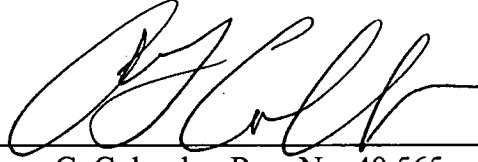
Therefore, the present application should now be in condition for allowance and such allowance is respectfully requested. Should the Examiner have any questions, please contact the undersigned at (800) 445-3460.

The Commissioner is hereby authorized to charge any fees associated with this communication or credit any overpayment to Deposit Account No. 19-0522.

Respectfully submitted,

HOVEY, WILLIAMS, TIMMONS, & COLLINS

By:

A handwritten signature in black ink, appearing to read 'A. Colombo', written over a horizontal line.

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